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International Labour Organization

ABOLITION OF BONDED LABOUR: MANUAL FOR POLICE

Promoting the Elimination of Bonded Labour in Pakistan (PEBLIP)

ILO Office for Pakistan

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ABOLITION OF BONDED LABOUR: MANUAL FOR POLICE

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Preface

International Labour Organization (ILO) is mandated, among others, with the responsibility to fight against the menace of Bonded Labour across the globe and play its beneficial role towards the relief and rehabilitation of bonded labour wherever it is found.

The Bonded Labour system is somewhat rooted in certain sectors of Pakistani economy. Pakistan being a responsible member of United Nations has signed and ratified various international Conventions that aim at the elimination of the bonded labour system from the country. Similarly, at the domestic level, it has taken various legislative steps to curb and eliminate this menace from its society e.g. the Bonded Labour System (Abolition) Act 1992 and Bonded Labour System (Abolition) Rules 1995.

ILO has launched many programmes in Pakistan to help eradicate the curse of the bonded labour from Pakistani society and to sensitize the masses and the other stakeholder about the matter. ILO is implementing a project "Promoting the Elimination of Bonded Labour in Pakistan (PEBLIP)" and these manuals on bonded labour are produced under this project. It is hoped that these manuals will help various stakeholders in the elimination of the bonded labour system.

Manual for the Abolition of Bonded Labour

1. Introduction

1) Different religions, philosophies, idealogies and beliefs are universally committed to upholding the values of human dignity and human freedom. These are maintained at all cost and form the foundation of any belief system They condemn in the strongest possible terms all forms of slavery, forced labour and bonded labour.

2) Post second world war, a plethora of human rights movements have come to the fore and a number of international Declarations and Conventions have come into force. No state, can therefore, exercise the sovereign right to treat its citizens as it wishes. Domestic laws therefore need to be consistent with internationally agreed standards as an obligation to international laws.

3) There is an intrinsic link between peace, security, human development and human rights. We cannot ensure social human development without peace and security and we cannot ensure peace and security without human development. In order to ensure peace and security human rights including decent labour standards need to be upheld.

4) The menace of bonded labour is one of the most serious violations of human rights as it affects all aspects of life including civil liberty, human dignity and economic rights.

5) Bonded labour or forced labour is universally equated with slavery and practices similar to slavery. The International Labour Organization (ILO), therefore, prioritized this issue and was one of the first organizations to address it in the wake of the First World War.

2. What is Bonded Labour?

1) The system of bonded labour is a relic of the anachonistic feudal system, which still functions in Pakistan. It is deeply rooted in the social customs and traditions that treat it as a normal human practice. The system of bonded labour is also closely associated to the broader socioeconomic problems of surplus labour, unemployment/under-employment, inequity in resource allocation, inequitable distribution of land and assets, low wages, distress migration and lack of social and economic justice.

2) The International Labour Organization's Report on 'Stopping Forced Labour (2001)' defines the term, Bonded Labourer, as a worker who renders services under the condition of bondage arising from economic considerations, notably indebtedness through a loan or an advance. Where the 'debt' is the root cause of the problem of bondage, the implication is that the worker (or dependent or heir or family member) is tied to a particular creditor for a specified or unspecified period of time until the loan is repaid.

3) Bonded labour - or debt bondage is considered to be a form of slavery but it is probably the least known form of slavery today, and yet it is the most widely used method of enslaving people. A person becomes a bonded labourer or a slave when its labour is demanded as a means of repayment for a loan. The

person is then trapped into working tirelessly for minimal or no pay, often for seven days a week. The value of their work is invariably greater than the original sum of money borrowed. The inhuman and indecent conditions of the work causes immeasurable indignity and distress on the labourer and/or his/her family or dependents.

3. Situational analysis

1) In the Asia-Pacific region, the majority of forced labourers reside in South Asia. However, there is no consensus on the scale of bonded labour within these countries especially in Pakistan. In Pakistan, there is no official number of bonded labourers. The most recent survey of bonded labourers carried out for the ILO by the Pakistan Institute of Labour Education and Research in October 2000 indicates that up to 6.8 million persons were living in conditions of bondage. A more conservative estimate - counting only those who said they were indebted to their landlord in Sindh - would be 1.8 million persons. The majority of these are "untouchable" Hindus. The same study estimates that across the 4,000 brick kilns in Pakistan, up to 700,000 persons are in debt bondage, over half of them women and children. These figures do not include workers in carpet weaving factories, where it is known that there is a high incidence of debt bondage and child labour[1].

2) The number estimate of bonded labour also depends on the 'definition' of bonded labour that varies from one surveyor to another. However, even without going into the authenticity of numbers, it is common knowledge that a large number of the people in certain sectors are trapped in one form or the other of bonded labour.

[1] UN Sub-Commission on the Promotion and Protection of Human Rights, Enslavement of Dalit And Indigenous Communities In India, Nepal And Pakistan Through Debt Bondage, February 2001

4. Sectors of Bonded Labour

Bonded Labour is mostly prevalent, with varying degrees, in one form or the other, in the following sectors of economic activity in Pakistan:

1) Brick kilns
2) Mining developments
3) Domestic workers
4) Begging
5) Agriculture
6) Bangles
7) Construction
8) Carpet Weaving

5. Consequences of Bonded Labour

1. The menace of bonded labour is a source of misery and suffering for millions of hard working men, women and children who are forced to work in deplorable working conditions due to their economic and social status.

2. It is the right of these individuals to be protected by law enforcement agencies. The existence of bonded labour is a poor reflection on the social and legal system of any country.

3. Pakistan is a Muslim state and a sizable portion of bonded labour belongs to minorities. So minorities are discriminated against.

4. The issue of bonded labour can trigger international sanctions including economic ones as in addition to the sanctioning powers of the Security Council, under the UN Charter, the ILO labour regime empowers international agencies to impose sanctions on a country which does not comply with the fundamental international labour standards and abolition of bonded labour.

5. The issue of bonded labour is affecting aid policies of bilateral and multilateral institutions. Major donors highlight this issue and demand that Pakistan shall abide by the international law.

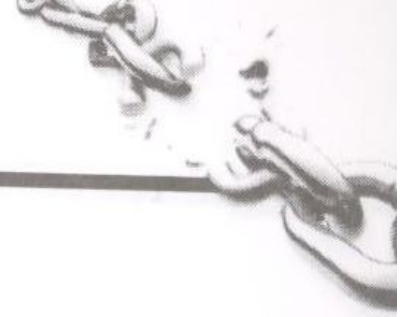
6. After the formation of WTO and the abolition of tariffs, the issues of violation of human rights, including bonded labour has attained greater importance and has had an influence on major policy dynamics in trade relations. The European General System of Preference (GSP) is one such example. By adhering to international labour standards, Pakistan will not only ensure the sanctity of its citizens but also lead to more productive economic relations with global partners and will be able to benefit from various international agreements including trade concessions.

7. Western buyers are conscious of and aware of products which use bonded labour. They ask their suppliers to provide them products which are made in an environment which is free from bonded labour.

8. Keeping in view the economic consequences of the point made above, this makes the Pakistani market vulnerable and negatively impacts Pakistani exports.

9. The eradication of bonded labour is a mandatory obligation on the state under Article 11 of the Constitution. A violation of this obligation is a violation of the Constitution.

10. In international comity of nations, we are obliged to conduct our domestic affairs in a universally recognized manner. The international legal regime, may be of UN or the ILO, regarding the eradication of the bonded labour, mandates us to ameliorate the conditions of bonded labour. And our failure or



negligence in not complying with international labour standards or violating the said international regime will be violation of international law.

6. International Obligations

1) Universal Declaration of Human Rights

a) The Universal Human Rights system consists of several national and regional instruments. The more significant among them are the Universal Declaration of Human Rights (UDHR, 1948), the International Covenant on Social and Political Rights (ICCPR, 1976) and the International Covenant on Economic Social and Cultural Rights (ICESCR, 1976).

b) In 1948, the UN Commission adopted a draft Declaration that in turn was adopted by the General Assembly that year as the Universal Declaration of Human Rights, with 48 states voting in favour of and 8 abstaining. (It should be noted that at that time the total UN membership stood as 56 states). This Declaration became the springboard for the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) enforced in 1976. These Covenants with the UDHR form the international bill of rights.

c) The Preamble of the Declaration highlights the following principles, which permeate the rights and duties, enshrined in the Declaration.

i. All members of the human family have an inherent

dignity and equal and inalienable rights.

ii. The recognition of the inherent dignity and of equal and inalienable rights is the foundation for freedom, justice and peace in the world.

iii. A disregard and contempt for human rights results in barbarous acts, which outrage the conscience of mankind.

iv. Human rights should be protected by the rule of law.

d). The following articles of the Charter are, directly or indirectly, relevant to the issue of bonded labour:-

1. Right to life, liberty and security (Article 3)
2. Freedom from slavery and servitude (Article 4)
3. Freedom from torture, or degrading treatment (Article 5)
4. Right to recognition as a person before the law (Article 6)
5. Right to equality before the law and to equal protection of the law (Article 7)
6. Right to an effective remedy, if rights are violated (Article 8)
7. Freedom from arbitrary arrest, detention or exile (Article 9)
8. Right to respect for privacy, family, home or

correspondence and honour (Article 12)

9. Right of freedom of movement and residence (Article 13)
10. Right to social security (Article 22)
11. Right to work and free choice of employment (Article 23)
12. Right to rest and leisure (Article 24)
13. Right to a standard of living , adequate for health and well being (Article 25)
14. Right to education (Article 26)
15. Right to participate in cultural life (Article 27)

2). UN Supplementary Convention on the Abolition of Salary

1) The UN Supplementary Convention on the Abolition of Salary (1956) defines bonded labour as "the status or condition arising from a pledge by a debtor of his personal service or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined".

2) The Convention aims at a total abolition of bonded labour.

3) International Covenant on Civil and Political Rights (ICCPR), 1976.

a) The International Covenant on Civil and Political Rights, along with International Covenant on Economic, Social and Cultural Rights constitutes the bedrock of modern International human rights. It was approved by the General Assembly on 9 December 1966 and came into force in 1976.

b) Pakistan has signed this Covenant on 17-4-2008.

c) The Preamble enunciates the following, among others, principles, which permeate the Covenant:

i. There is an inherent dignity of human persons.

ii. Freedom from fear and want is the ideal for which human beings should strive.

iii. The ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his/her economic, social and cultural rights, as well as his/her civil and political rights.

iv. Every individual has duties to other individuals and to the community to which he/she belongs.

d). The following articles of the Covenant are, directly or indirectly, relevant to the issue of bonded labour:-

(i) Right to life (Article 6)

(ii) Freedom from torture and degradation (Article 7)

(iii) Freedom from slavery and servitude (Article 8)

(iv) Right to liberty and security of person (Article 9)

(v) No imprisonment in cases of contractual obligations.(Article 11)

(vi) Freedom of movement and residence.(Article 12)

(vii) Equality before law and other procedural safeguards.(Article 14)

(viii) Right to recognition before law.(Article 16)

(ix) Freedom from interference with his privacy, home etc.(Article 17)

(x) Protection of family rights.(Article 23)

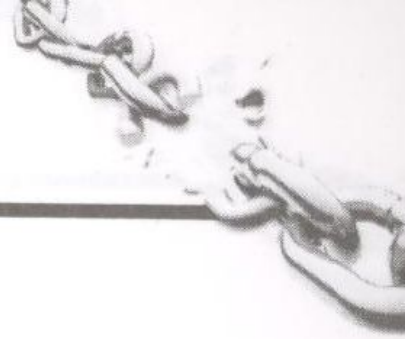
(xi) Rights of children (Article 24)

(xii) Equality before law.(Article 26)

(xiii) Rights of minorities.(Article 27)

4). International Covenant on Economic, Social and Cultural Rights

a) The International Covenant on Economic, Social and Cultural Rights was adopted by the General Assembly on 16 December 1966 and came into force in 1976.



b) Pakistan has signed this Covenant on 3-11-2004 and has ratified it on 17-4-2008.

c) The Covenant is essentially a 'promotional convention' stipulating objectives more than standards and requiring implementation over time rather than all at once.

d) The following articles of the Covenant are, directly or indirectly, relevant to the issue of bonded labour:-

(i) Right to work and training (Article 6)

(ii) Right to just and favourable conditions of work (Article 7)

(iii) Right to form and join trade unions (Article 8)

(iv) Right to social security (Article 9)

(v) Protection of and assistance to family (Article 10)

(vi) Right to an adequate standard of living (Article 11)

(vii) Right to physical and mental health (Article 12)

5). Convention on the Rights of the Child, 1989

a) The Convention on the Rights of the Child, 1989 (CRC) is the main Convention on the rights of the child. Pakistan has ratified it in 1990.

b) The following articles of the CRC directly deals with those children involved in bonded labour:

i. Article 32: "States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or... be harmful to the child's health or physical, mental, spiritual, moral or social development." States are directed to implement and ensure these protections.

ii. Article 35: "States Parties shall take all appropriate measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form."

iii. Article 36: "States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare".

7. ILO Obligations

1. Modern international human right laws originated from the International Labour Organization (ILO) which was established by the Treaty of Versailles in 1919 to abolish the 'injustice, hardship and privation' which workers suffered and to guarantee 'fair and humane conditions of labour'.

2. The ILO has been a pioneer in the international protection of economic and social rights and has an impressive record of achievement in the field. The ILO adopted international minimum standards in relation to freedom of association and the right to organize trade unions, forced labour, minimum working age, hours of work, weekly rest, sickness protection, accident, invalidity and old-age insurance, and freedom from discrimination in employment.

3. There are two principal aspects of this work: standard-setting and measures of implementation. As regards standard setting, the ILO employs two principal methods:

   (i) the conclusion of international conventions; and

   (ii) the adoption of recommendations.

4. The conventions, of course, are binding only on the states, which ratify them. Recommendations on the other hand do not create legal obligations for the states. Their purpose is rather to set standards. Since

its creation the ILO has adopted more than 170 international conventions. The number of recommendations is even larger than the number of conventions.

5. The following conventions directly relate to the issue of the bonded labour:

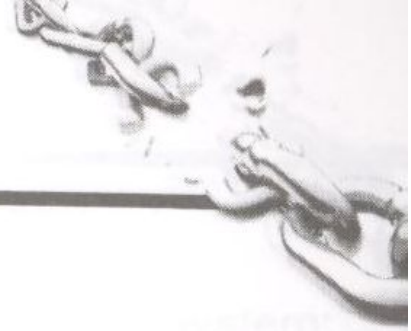
a). Convention C-29: Forced Labour Convention, 1930

(i) Convention C-29 is called Forced Labour Convention, 1930 and it is one of the major two conventions of the ILO that are directly related to the issue of bonded labour. The convention is entitled as "Forced Labour Convention 1930".

(ii) It was passed by the General Conference of ILO in 1930. Pakistan has ratified this convention on 23:12:1957. In other words, this convention is legally binding on Pakistan and the Government of Pakistan is under international law obligation to bring its laws in conformity with the convention.

(iii) Under this convention each Member of the International Labour Organization which ratifies this Convention undertakes the commitment to suppress the use of forced or compulsory labour in all forms within the shortest possible period.

(iv) However, with a view to this complete suppression, recourse to forced or compulsory labour may be had,



during the transitional period, for public purposes only as an exceptional measure that too subject to the conditions and guarantees provided in the Convention. (Article 1).

6. For the purpose of this Convention the term "forced or compulsory labour" shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

7. Nevertheless, for the purposes of this Convention, the term "forced or compulsory labour" shall not include:-

   a) any work or service exacted in virtue of compulsory military service laws for work of a purely/military character;

   b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

   c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies, or associations;

   d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine,

earthquake, violent epidemic or epizootic diseases, invasion by animal, insect, or vegetable pests, and in general any circumstance that would endanger the existence or well-being of the whole or part of the population;

e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community. (Article 2)

b). Convention 105: Abolition of Forced Labour Convention 1957

(1) The second major ILO Convention is the 105 Convention entitled 'Abolition of Forced Labour Convention 1957'. It was passed by the General Conference of ILO in 1957.

(2) Pakistan has ratified this convention on 15:02:1960. In other words, this convention is legally binding on the Pakistan and Government of Pakistan is under international law obligation to bring its laws in conformity with the convention.

(3) Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour:-

a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the

established political, social or economic system;

b) as a method of mobilizing and using labour for purposes of economic development;

c) as a means of labour discipline;

d) as a punishment for having participated in strikes;

e) as a means of racial, social, national or religious discrimination. (Article 1)

4. Each Member of the International Labour Organisation which ratifies this Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour. (Article 2)

8. National Legal Regime

a) Constitution of Pakistan

1) Chapter 1 of the Constitution of Pakistan deals with 'Fundamental Rights' and Chapter 2 has details on the 'Principles of Policy'. The rights enumerated in Chapter 1 are fundamental rights and are justiciable and can be enforced by any individual through courts whereas human rights enshrined in the Principles of Policy are not justiciable, so cannot be enforced through courts. Furthermore, any law, custom or agreement etc which is in violation of these fundamental rights has been declared null and void by Article 8 of the Constitution.

2) Article 11 of our Constitution prohibits all forms of forced labour. The article further declares that:

   a) slavery is non-existent and forbidden;

   b) no law shall facilitate slavery in any form;

   c) all forms of forced labour and trafficking in human being is prohibited;

   d) No child under the age of 14 years can be engaged in any factory or mines or other hazardous employment;

   e) Though article 11 allows certain forms of compulsory service for public purpose; it puts a ban on any service of a cruel nature which is

incompatible with human rights.

3). This norm declared by Constitution about abolition of forced labour and slavery is consistent with all the norms of international human rights law. **(Annex A)**

b) Pakistan Penal Code 1860

1. Pakistan Penal Code 1860 (PPC) is the major penal law of the land. Many provisions of the PPC are relevant with various aspects of bonded labour. The criminal manifestation of bonded labour includes wrongful restrain, wrongful confinement, extortion of property, use of criminal force, criminal assault, kidnapping, abduction, hurt and even murder. Adequate provisions have been made for various aspects of criminal behavior in this general law.

2. The law makers were even cognizant of the issue of unlawful compulsory labour which is directly or indirectly related to the bonded labour. Section 374 of PPC deals with the unlawful compulsory labour. Unlawful compulsory labour has been defined as an offence when anybody unlawfully compels any other person to engage in labour against the will of that person and it has been criminalized with the penalty of imprisonment for a term which may extend to 5 years or with fine or with both. Initially the imprisonment was one year; however, in 1969 it was raised to five years; this is the first ever law inherited by Pakistan on the issue of compulsory bonded labour containing a

criminal penalty. **(Annex B)**

c). Darshan Masih Case

(1) The menace of bonded labour has been brought to the lime light by judicial activism starting from 1988 to date. On 30th July 1988 a telegram was sent from Lahore to the Chief Justice of Pakistan, Mr. Justice Afzal Zullah. It read:

'We plead for protection and bread for our family. We are brick kiln bonded labour. We have been set at liberty through the court and now three amongst us have been abducted by our owners. Our children and women are living in danger. We have filed complaint. No action taken. We are hiding like animals without protection or food. We are afraid and hungry. Please help us. We can be contacted through counsel. Our state can be inspected. We want to live like human beings. The law gives no protection to us'.

(2) The then Chief Justice of Pakistan, Mr. Justice Afzal Zullah treated it as a public interest litigation and took cognizance in constitutional jurisdiction under Article 184(3) of our Constitution that gives the court jurisdiction to take cognizance when there is an issue of enforcement of fundamental rights and of public importance.

(3) The honorable court formed many committees consisting of all the relevant stakeholders including laborers, employers, trade unions and lawyers etc to

study the bonded labour issue and submit a report to the apex court. The committees submitted various reports to the honorable court and the apex court while treating the matter falling under Articles 9, 11, 14, 18 and 25 of the Constitution made those recommendations as a part of its order. The case is reported as PLD 1990 SC 513. The directions of the Supreme Court of Pakistan are as under:-

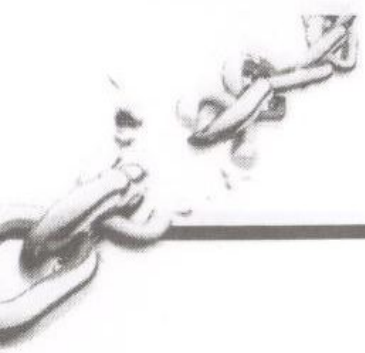
1) The Peshgi system was to be discontinued forthwith except that up to one week's estimated wages may be paid by the owner to the worker as advance against proper receipt;

2) The payment shall be made to the worker concerned or the head of the household, direct in cash. The receipt shall be issued in duplicate, one to be retained by each;

3) The institution of "Jamadar" is finished and he is excluded for all times. No payment for others shall be made to him nor shall it be acknowledged in any forum, as due in any form, if claim have been made through him;

4) The institution of "Jamadarni" is likewise finished altogether;

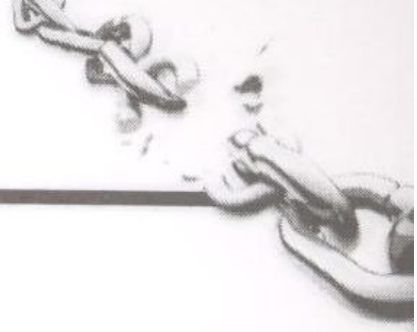
5) Every case registered anywhere in Punjab by the Police, which deals with, directly or indirectly, any of the constituents of the practice of bonded labour in the brick-kiln industry, shall be reported to the



Advocate General, with a copy of the FIR within 24 hours. The Advocate General shall submit a photocopy of the FIR and other documents, if any with his own comments, within further 24 hours, to the Supreme Court;

6) Past Peshgis, for the time being, shall not be treated as void and unrecoverable. However, they shall not at all be recovered in any form through police or through the employment of the so-called "labour" under the Peshgi recovery arrangements or through any coercive measure; and further orders shall be made by the court in this behalf including the request for utilization of the Zakat fund for the discharge of so-called bad debts of Peshgi. The question whether recoveries would-be abolished altogether and whether legislation shall be made on the lines as done in India, is deferred for the time being, for six months. This aspect shall be reviewed in the light of the working of these arrangements for which all concerned have agreed, if approved by court.

7) Filing of Habeas corpus petitions shall not be stopped. However, all concerned have agreed that if the arrangements agreed upon are put into practice the need for filing false/genuine habeas corpus petitions would not arise. The Advocate General shall, however, appear personally in every habeas corpus petition whether in the High Court or in the Supreme Court;



8) The owners shall not directly ask or pressurize any laborer for employing the womenfolk or children. However, if the latter do so at their own risk and responsibility, no complaint shall then be made against the Bhatta owners in this behalf. The head of the household who employs any of their womenfolk against her wishes and or children, might in proper cases, be proceeded against. The payment made to the head of the household including that of his family members', male, female, shall be in the name of the head of the household. Separate recipients may not be mentioned in formal registers and receipts.

9) No deduction whatsoever shall be made from wages; nor shall the number of bricks, if they are more than 1000 be counted as 1000 in any garb. The damage/loss to the bricks suffered on account of rain shall be wholly borne by the owner. Similarly, no other deduction including that of past Peshgi loans including those for marriage or for medicine treatment etc shall be made from the wages.

10. Payment made by the owner to the laborer in addition to the wages whether in the form of formal loan or otherwise for marriages and other ceremonies or for medicines or other purposes shall not be recoverable from the labour. If genuinely paid/spent they shall be treated as for good-will or donation.

Past Peshgis

There was some confusion regarding the status of peshgi, so certain stakeholders applied to the court for the clarification of its early order. So the court passed this explanatory order:

1) It is to be made clear that past unreturned Peshgis given to the laborers by brick kiln industry owners are still outstanding against the laborers. The laborers are legally bound to return all such outstanding Peshgis to the respective kiln industry owners. However, in case of denial of peaceful return of these Peshgis, the owners are authorized to recover the same by legal means i.e. through court decrees-cases to be decided expeditiously with effective notices to the laborers; but, they are not authorized to use unlawful means for the recoveries of such Peshgis, such as coercive methods or use of police.

2) Past Special Emergency Loans. A maximum of Rs.5000/- household granted to the laborers in the past, in the form of formal loans or grants for: marriages, religious festivals, medicine/treatment and death ceremonies, by the owners (to the laborers) shall not be recoverable from them and shall be treated as donation. This concession shall only be available to those laborers who return and resume their work voluntarily.

3) Future Pesghis. The Peshgis system in future is to be discontinued. Although in proper cases if a valid

agreement on this point is reached between a laborer and a brick-kiln owner, the latter shall give the former an advance loan, which shall not in any case be more than seven days wages, against a proper receipt in duplicate, a copy of which shall be retained by both the parties. The payments/adjustments of which shall be made to the owners in easy installments as agreed by the parties. However, if a loan in this behalf is not settled/adjusted, no additional loan is to be advanced by the owner and if given that would be against the spirit of the agreement and would be at the risk of the owner.

4) Return work. A notice/direction is to be issued to all the laborers to come for work and report to their respective Bhatta owners who will give them assurance in writing that they will not use any coercive methods or use of police force to bring them back or to retain them. However, in case of a laborer who not want to come back or having returned, wants to leave his work in the Bhatta of an existing owner, or to get a job elsewhere, or in the Bhatta of another owner, he shall not be retained forcibly provided he on application to be made to the concerned District Judge/Civil Judge 1st Class gets a certificate for the purpose.

5) Payment of wages. Payment of wages shall have to be made to the laborers on a daily/weekly/fortnightly/monthly basis as agreed upon between the laborer and Bhatta owner, regularly. No deductions are to be made from their wages; for the

damage/losses to bricks caused on account of rain and it shall be borne by the Bhatta owners.

6) Jamadar/Jamadar system. The existing Jamadar/Jamadarni system is to cease forthwith. All the laborers shall have direct dealings with their respective owners. No payments on behalf of the laborers shall be made to them nor recoverable/adjustable.

7) The owners shall not directly or indirectly ask or pressurize any laborer for employing the womenfolk or children. However, if the latter do so at their own risk and responsibility, no complaint shall then be made against the Bhatta owners in this behalf. The head of the household who employs any of their womenfolk against her wishes and or children might in proper cases be proceeded against.

Implementation Mechanism

On the implementation side, the court ordered: 'For the time being, it has been decided to make amongst others, the following arrangements for the implementation of the interim agreement/decision reached with the consent of all concerned:-

1) The Advocate General of the Province shall be in charge of all criminal matters directly or indirectly concerned with the practice of Bonded Labour whether or not formally instituted or registered. He shall also be indirectly in charge of the processes of the recovery of

past genuine Peshgis in so far as it would be practicable, till a new law is made about the same. He shall also be directly involved in the determination of the amount of past peshgis.

2) The provincial Bar Councils, the High Court Bar Associations, district Bar Associations, and other local Bar Associations, shall form committees to deal with the Bonded labour. The Vice Chairman of the provincial Bar Council shall be the head of this system of committees. The president of the Lahore High Court Bar Association will coordinate his proceedings with the Vice-Chairman of the Bar Council;

3) A separate press committee shall be formed with Mr. Majid Nizami, Chief Editor of Nawa-e-Waqat, subject to his consent, as the Head of this Committee;

4) A committee for women and children shall be formed with Begum Dr. Justice Javed Iqbal as its chairperson, subject to her consent;

5) Honorable Chief Justice of the Lahore High Court will be approached by the learned Advocate General to apprise him of the bonded labour situation in Punjab and about the present case and proceedings. The Advocate General shall also make a request for nomination of an Honorable Judge of the High Court from amongst the members of the Administration Committee, to deal with the cases, which the Advocate General would certify as concerned directly or indirectly with the subject of bonded labour.

nomination of an Honorable Judge of the High Court from amongst the members of the Administration Committee, to deal with the cases, which the Advocate General would certify as concerned directly or indirectly with the subject of bonded labour.

d). Bonded Labour System (Abolition) Act 1992

1. After the Darshan Maseh case, the Bonded Labour System (Abolition) Act 1992 was promulgated on 11th March 1992. The preamble of the act provides for abolishing the bonded labour system as Article 12(2) of the Constitution prohibits all forms of forced labour and the Constitution further dictates to bring the economic and physical exploitation of the labour class in the country to an immediate end.

2. The law extends to the whole of Pakistan and came into force at once.

3. Section 2 of the Act defines various terms used in the Act including advance, bonded debt, bonded labour, bonded labourers, bonded labour system, family and nominal wage.

4. The bonded labour system is defined as:

" s 2 (e) "bonded labour system" means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered into an agreement with the creditor to the effect that

(i) in consideration of an advance (peshgi) obtained by him or by any of the members of his family [whether or not such advance (peshgi) is evidenced by any document) and in consideration of the interest, if any, due on such advance (peshgi), or

(ii) in pursuance of any customary or social obligation, or

(iii) for any economic consideration received by him or by any of the members of his family; he would

(1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor or for the benefit of the creditor, for a specified period or for an unspecified period either without wages or for nominal wages, or

(2) forfeit the freedom of employment or adopting other means of livelihood for a specified period or for an unspecified period, or

(3) forfeit the right to move freely from place to place, or

(4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him; and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has or is presumed to have, entered, into an agreement with the creditor to the effect that, in the event of the failure of the debtor to repay the debt, he would render the bonded labour

debtor.

5. Similarly, the family is defined as:

   '2(f) "family" means:

   (i) in the case of a male bonded labourer, the wife or wives, and in the case of a female bonded labourer, the husband of the bonded labourer, and

   (ii) the parents, children, minor brother, and unmarried, divorced or widowed sisters of the bonded labourer wholly dependent on him;

6. The law is an overriding law as it over-rides any other provision contained in any other law for the time being in force (Section 3).

7. The bonded labour shall stand abolished and every bonded labourer shall stand freed and discharged from any obligation to render any bonded labour.

8. Any custom or trade or practice or contract etc. by virtue of which a person or any member of his family is required to do bonded labour is declared void and inoperative.

9. Every obligation of the bonded labour to repay the bonded debt is extinguished;

10. A suit or proceedings in any form for the recovery of bonded debt is not allowed;

11. if the decree has been passed for the recovery of the bonded labour, it is inoperative;

12. if the property has been forcibly taken away by the creditors for such recovery, such property shall also be restored;

13. if any sale , transfer or assignment of any property of bonded labour is made for the recovery of the debt, it is also null and void;

14. if any mortgage, charge, lien or any other encumbrance is made on the property of the bonded labour in connection with bonded labour or debt, all those are discharged from such encumbrance.

15. Creditors are directed not to accept any payment against any bonded debt and if any one contravenes this provision, he shall be imprisoned for a period which may extend to three years or with fine which shall not be less than fifty thousand rupees or with both.

16. If any body compels any person to render any bonded labour, he shall be punishable with imprisonment of a term which is not less than two years and not more than five years and a fine which shall not be less than fifty thousand rupees or both. (Section 11).

17. These offences are tried by the Magistrate of First Class and can be tried summarily. The offices are cognizable and bailable.

18. The provincial government may confer powers and impose duties upon the District Magistrates to ensure the implementation of this Act and to promote the welfare of the freed bonded labour by securing and

the implementation of this Act and to promote the welfare of the freed bonded labour by securing and protecting the economic interests of such bonded labour. (Section 10)

19. Vigilance committees are made at every district:

(a) to advise the District Administration on matters relating to the effective implementation of the law and to ensure its implementation in a proper manner;

(b) to help in the rehabilitation of the freed bonded labourer;

(c) To keep an eye on the working of the law; and

(d) To provide the bonded labourers such assistance as may be necessary to achieve the objectives of the law. **(Annex C)**

e). Bonded Labour System (Abolition) Rules, 1995

(1) For the smooth operation and implementation of this Act of 1992, the federal government is empowered to frame rules under section 21 of the Act 1992.

(2) The federal government made the rules that are called the Bonded Labour System (abolition) Rules, 1995. The rules came into force at once.

(3) Rule 3 empowers the provincial governments to designate an authority or authorities to deal with the

restoration of the property of the bonded labour. Any member of the bonded labour family can apply to the authority for the restoration of their property.

(4) Rule 3 provides that the provincial government is to establish one or more authorities and it details its composition. It empowers the authority to handle the cases of restoration of possession of any property of the bonded labour and provides a mechanism from filing to hearing and final adjudication of the application by the bonded labourer and specifies a time period of 30 days for decision. The limitation for filling the application has been given as seven years from the day of accrual of cause of action.

(5) Rule 4 provides details about the Powers to be exercised and duties to be performed by the District Magistrate for implementing the provisions under the Act 1992.

(6) Rule 5 deals with the conferment of powers by the District Magistrate upon the other officers.

a) Rule 6 talks of composition and meetings of the vigilance committees.

b) Similarly rule 7 provides a detailed list of functions which these vigilance committees shall perform.

c) Rule 8 provides for the term and tenure of the non official members of these vigilance committees.

d) Rule 9 establishes a fund for the rehabilitation and

about the collection/contribution of the fund and its onward utilization.

e) Rule 10 provides that the non official members shall be entitled to traveling allowance and daily allowance as determined by the provincial government.

f) Federal Shariat Court Judgment

1. The Brick kiln owners filed petitions in the Federal Shariat Court (FSC) of Pakistan to declare the Bonded Labour System (Abolition) Act 1992 and the Rules made there under in 1995 as un-Islamic. (Shariat Petitions No.8/C of 1993 and others)

2. The Federal Shariat Court is a constitutional court constituted under Article 203(c) of the Constitution. The court under Article 203(d) has a special jurisdiction, either of its own motion or on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the Injunctions of Islam, as laid down in the Holy Quran and Sunnah of the Holy Prophet.

3. If the Court decides that any law or provision of law is repugnant to the Injunctions of Islam, it shall set out in its decision:

   (a) the reasons for its holding that opinion; and

   (b) the extent to which such law or provision is so

repugnant; and

(c) specify the day on which the decision shall take effect.

4. If any law or provision of law is held by the Court to be repugnant to the Injunctions of Islam, then the President or the Governor, as the case may be, shall take steps to amend the law so as to bring such laws or provisions into conformity with the Injunctions of Islam; and such laws or provisions shall, to the extent to which it is held to be so repugnant, cease to have effect on the day on which the decision of the Court takes effect.

5. The matter was argued at length by various parities and the court vide its judgment dated 10-10-2005 declared that the Bonded Labour System (Abolition) Act 1992 and the rules made there under are wholly in accordance with the constitution of Pakistan and teachings of Islam.

6. Three member bench headed by Chief Justice, Mr. Justice Ejaz Yousuf of the honorable court after declaring the law Islamic further observed as under:-

a) that the bonded labour abolition regime is Islamic and in tune with Constitution;

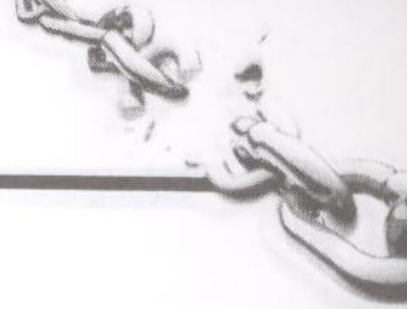
b) That the law is not being implemented; hence, the government should take it seriously to implement the law; that the objective for which the act was passed could not be achieved so far as almost every day reports come out in national press about

the unlawful dentition of laborers working in brick kilns;

c) That under section 9 and 10 of the Act, District Magistrates/district nazims have been made responsible to ensure that provisions of the act are properly enforced and the welfare of the freed bonded labour is taken care of. Similarly, section 15 provides for the constitution of vigilant committees. It is unfortunate that so far no specified authority, (vide Section 9) in any district in Pakistan has taken care to exercise its powers so as to alleviate the misery and torture being inflicted upon the brick kiln laborers by many owners, in their respective jurisdictions. Likewise, no vigilance committees have been formed anywhere in the country. This state of affairs is alarming, to say the least. It has immensely distressed us.

d) It is for the government functionaries to ensure the due and purposeful enforcement of the Act in its letter and spirit, so that the menace of forced labour rampant in brick kilns, and other similar establishments all over the country, is checked and comprehensively exterminated.

e) that a brick kiln squarely falls within the purview of "factory' vide section 2(j) of the Factories Act 1934. It is high time that all the brick kilns are duly registered as factories to enable the labour inspector to pay regular visits to them and take



suitable action/measures, in accordance with the Labour Laws to achieve the objective of banishment of practice of forced labour from this industry.

f) Bonded Labouers Research Forum, Ministry of Labour Manpower and Overseas Pakistanis, ILO and Pakistan Institute of Labour and Research did a commendable job in preparing studies but no action, so far, seems to have been taken.

g) We direct that a copy of this judgment be forwarded to (i) Ministry of Law, Justice and Parliamentary Affairs; (ii) Ministry of Labour, Manpower and Overseas Pakistanis, Government of Pakistan as well as to all the provincial governments in the country.

g). Courts behavior

i. As per a study conducted by the International Labour Organization, in Sessions Courts in Punjab from 2000 to 2005, 143 cases in the nature of habeas corpus for the release of bonded labour were filed. Out of 143, in 123 cases which are 87% of the total, the courts set the detenues at liberty and the rest were dismissed on various grounds. But the courts did not pass any direction to the police, district administration or the ilaqa magistrate etc to prosecute the delinquents.

ii. Similarly, in the Lahore High Court in 2003, a total of 137 cases were filed; in 2004 141 cases were filed

whereas in 2005 only 80 cases were filed. In 66% cases the court set the detenues at liberty but no directions were passed for prosecution.

iii. In the province of Sindh, during this period from 3-10-2004 to 5-8-2005, in Sindh High Court Hyderabad Bench, 5 cases were reported wherein allegedly 133 persons were detained and all those were agriculture persons and they were only set at liberty.

iv. In NWFP (now Khyber Pkhtoon Khawa) and the province of Balochistan, aa similar pattern is followed.

v. The Sessions courts and High Courts have the powers to direct the relevant authorities of the criminal justice administration system to initiate the criminal proceedings against the persons who allegedly extract forced or bonded labour from the people but the courts have not so far passed any such instructions in any case so reported.

9. General Remedies Available to the Bonded Labourer

1). Nature of Problems

The bonded labourer or his family are very vulnerable and face many problems. If we try to indicate most frequently problems faced by the bonded labour, we can say:

a) he or she is forced to do bonded labour or some other offence has been done to him or her;

b) he is illegally detained or confined;

c) his property is taken away;

d) he needs legal assistance;

e) He is freed but needs rehabilitation.

2). Authorities to be approached

There are many remedies available to them but they do not know about these remedies or their processes. For example, for such or any other problem, the needy bonded laborer can approach:

a. District Authorities

b. Vigilance Committee

c. Restoration Authority

d. CSOs, NGOs etc

e) Free legal aid services

f) Police

g) Magistrate

h) Sessions Court

i) High Court

j) Supreme Court

3). Seeking Help of the District Authorities

1. The bonded labourer or his family may face many problems. There are many remedies also available to them for each problem e.g. bonded labourer can have the following problems:

a) he is forced to do bonded labour or some other offence has been done to him or her;

b) he is illegally detained or confined

c) his property is taken away

d) he needs legal assistance

e) He is freed but needs rehabilitation.

2. In all such situations, he can approach the District Nazim, District Coordination Officer, District Magistrate etc (or their equivalent) for help and it is their duty to help him.

3. Such officers shall try to promote the welfare of the freed bonded labourer by securing and protecting the

economic interest of such bonded labourer.

4. It is the duty of the District Coordination Officer, District Nazim or District Magistrate (or their equivalent) or any other officer designated by them to enquire whether any bonded labour system or any other form of forced labour is being enforced and if such labour or system is found, then to take necessary action.

4). Seeking Help of the Vigilance committees

1. The Provincial Government is obliged to set up the vigilance Committees at District level. If a bonded labourer has any problem, he or she can approach the local Vigilance Committee.

2. It is the duty of the vigilance committee to:

   a) To help district administration for effective implementation of the law about bonded labour;

   b) Help in the rehabilitation of the freed Bonded labour;

   c) To provide assistance to the bonded laborer;

   d) Get restore property, if any, of the bonded labour.

3. The bonded labourer or his family may face many problems. There are many remedies also available to them for each problem. In all such situations, he can approach the District vigilance committee for help and it is a legal duty of the Committee to help him.

5. Seeking Help of the Authority for Restoration of the property

1) The provincial governments are under legal duty to appoint or designate an authority in each district to help the bonded labour for the restoration of its property if it has been snatched, sold, transferred etc by any one.

2) A bonded labourer, if have such problem, can apply to such authority or vigilance committee for the restoration of the possession of the property if it has been taken by creditor, sold , transferred etc;

3) The authority has to decide the matter within 30 days of the filing of the application.

6). Seeking Legal Assistance

If any bonded labourer needs legal guidance, he or she can approach:

a. Legal Aid services Units/centres set up by the provincial government.

b. District Vigilance Committee.

c. Free Legal Aid services provided by the District government.

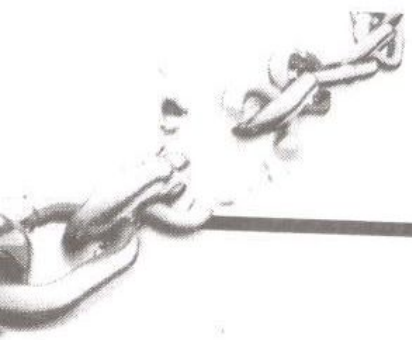
d. Free Legal Aid services provided by the Bar Associations.

e. Free Legal Aid services provided by the local or

national Civil Society Organizations or NGOs.

7). Seeking Help of a CSO, NGO

1. If a bonded labourer or his family is facing any problem, he or she can approach a local CSO or NGO working for the abolition of bonded labour.
2. The CSO or NGO can help to solve the problem by:
   a. Arranging access to relevant legal services or forums;
   b. Approaching District Vigilance Committee;
   c. Approaching Police;
   d. Approaching the Magistrate, the Sessions Court or High Court;
   e. Providing free legal assistance;
   f. Providing shelter;
   g. Helping rehabilitation;
   h. Highlighting the matter in media to attract attention of the relevant authorities etc.



10. Remedies Available in Criminal Matters

1. The Bonded Labour System (Abolition) Act 1992 and Pakistan Penal Code 1860 create some special offences with respect to the bonded labour system. These offences are in addition to the general offences relevant to the bonded labour system like wrongful confinement, detention, kidnap etc that are already in many laws including Pakistan Penal Code 1860. The special offence as mentioned above are:

a. If someone compels any person to render any bonded labour, he shall be punishable with imprisonment for a term which shall not be less than two years and not more than five years, or with fine which shall not be less than fifty thousand rupees, or with both. (Section 11, Act 1992)

b. If someone enforces any custom, tradition, practice, contract agreement etc by virtue of which any person or any member of his family is required to render any service under the bonded labour system, he shall be punishable with imprisonment for a term which shall not be less than two years and not more than five years or with fine which shall not be less than fifty thousand rupees , or with both; and out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of not less than fifty rupees for each day for which bonded labour was extracted from him. (Section 12 Act 1992)

c. If someone was required to restore any property to the possession of any bonded labour, but omits or fails to do so, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both; and out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of ten rupees for each day during which possession of the property was not restored to him. (Section 13, Act 1992)

d. If someone abets any offence punishable as above, shall, whether or not the offence abetted is committed, be punishable with the same punishment as is provided for the offence which has been abetted. (Section 14, Act 1992)

2. If someone unlawfully compels any person to labour against the will of that person, he shall be punished with imprisonment of either description for a term which may extend to five years or with fine, or with both. (Section 374, PPC)

3. Similarly detaining or illegally confining a person is also an offence.

4. In the light of the above it is an offence if:

a. someone is compelled to render any bonded labour;

b. someone enforces any custom, tradition, practice, contract agreement etc by virtue of which any person or any member of his family is required to render any service under the bonded labour system;

b. someone enforces any custom, tradition, practice, contract agreement etc by virtue of which any person or any member of his family is required to render any service under the bonded labour system;

c. someone was required to restore any property to the possession of any bonded labour, but omits or fails to do so;

d. someone abets any offence punishable as above; or

e. someone unlawfully compels any person to labour against the will of that labourer; or

f. Someone is detained or illegally confined.

3. If any of the above offences are committed against a bonded labour, or any member of his or her family, the following legal remedies available to him or her. He or she can use any of remedies available (details below):

A. Registration of FIR with Police

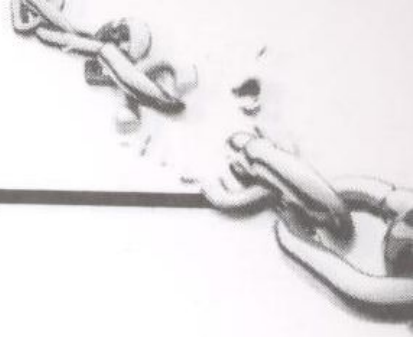
B. Filing a direct complaint before a Magistrate

C. Search Warrants by the Magistrate

D. Habeas Corpus Petition in Sessions Court

E. Habeas Corpus Petition in High Court

F. Original Jurisdiction of the Supreme Court (in exceptional cases)



11. What Can Be Done?

1). FIR with the Police

a). What is an FIR?

i. FIR means First Information Report given to the police about the commission of an offence.

ii. Any information relating to the commission of an offence can be given in writing to the officer in charge of the police station.

iii. If the information is given orally, then the officer in charge of the police station shall reduce this information into writing by him or under his directions and then be read over to the informant.

iv. Any such information given in writing or reduced to writing as discussed above shall be signed by the person giving this information.

b). Who can lodge an FIR?

i. Any lawyer who has been consulted and is of the opinion that law has been breached, can help or guide the bonded labourer himself or his father, brother, wife or any other relevant person to lodge a FIR. This is called, in simple words, registration of First Information Report (FIR).

ii. Any lawyer, who thinks that any of the relevant provisions of the Bonded Labour System (Abolition)

Act 1992 or any relevant provision of Pakistan Penal Code 1860 has been breached, can himself get a case registered in the local police station.

iii. Any other person, who is even not related to the bonded labour or a detained person or a NGO, CSO, but has information of the commission of the offence, can seek assistance from a lawyer before giving this information to the police or filing a direct complaint or a petition for habeas corpus.

iv. The FIR can be lodged even by a minor.

c). When FIR shall be lodged?

i. The FIR should be registered immediately after the commission of the offence or coming into knowledge of the commission of the offence.

ii. The delay in the registration of the FIR can cause serious problems.

d). Is police under duty to register a FIR?

i. The officer in charge of the police station is under a statutory duty under section 154 of the Code of Criminal Procedure 1898 to enter, so given information regarding the commission of the offence in a prescribed Register **(Annex D)**.

ii. The police shall immediately register the FIR and it does not have jurisdiction to delay the matter.

iii. The police officer cannot refuse to register a case

where a cognizable offence is made out.

iv. And if the police does not register the FIR, penal action can be taken against the police official under the Police Rules 1861 and similarly under other Police related laws.

v. And if the police does not register the FIR, it may lead to disciplinary action against the delinquent police officer or official.

e). What is the purpose of an FIR?

i. The purpose of the recording of the FIR is to put criminal law into motion and to provide a sound basis for carrying out an investigation.

ii. The primary object of the FIR is to convey information about the commission of the cognizable offence, which a police officer is competent to investigate.

iii. So upon registration of FIR, the officer in charge of the police station shall start an investigation of the alleged offence without any order of the magistrate.

iv. The information so provided shall be about the alleged commission of the offence or suspicion of it whether such information is ultimately proved to be correct or not.

f). What is the value of an FIR?

i. i. An FIR is a very important document in a criminal case which provides vital information on the

possible truth of the allegations against the accused. The registration of the FIR is a first impression of the prosecution case.

ii. The FIR is not a substantive piece of evidence but at the same time its importance cannot be ignored because it depicts the initial version set up by the prosecution.

iii. However, the conviction of the accused cannot be based on an FIR alone and for the conviction, the prosecution has to lead to evidence beyond a reasonable doubt.

iv. The registration of an FIR does not mean that the person against whom allegations are leveled are in fact guilty of the offence as the question of guilt or innocence depends upon the investigation and then trial by a competent court.

v. Registration of an FIR does not mean that the alleged offender or accused shall be immediately arrested. The police carry pout proper investigations before an arrest is made.

vi. The police can draw conclusions that are different from those reported in the FIR after its investigation.

g). What shall be included in the FIR?

i. The FIR need not have all the relevant details; it can have basic details.

ii. A mere defect in the recording of FIR or recording of FIR after investigation would not make the trial illegal.

iii. All the major details of the incident are not required to be given in the FIR but major and important points need to be mentioned.

iv. The following facts may be included in the FIR if possible:

a) Name of complainant

b) Parentage of complainant

c) Address of complainant

d) Profession of complainant

e) Age of complainant

f) Name of the offender or offenders

g) Alias, if any, of the offender

h) Identity of offenders

i) Parentage of the offender

j) Address of offender

k) Facts about offence i.e. what did the offender do, circumstances of the offence, details of property if involved, details of arms if involved, etc.

l) Name of eye witnesses

h). If the police does not register an FIR, what can be done?

i. i. A police officer cannot refuse to register a case

where a cognizable offence is made out.

ii. And if the police does not register the FIR, that entails penal action against the police official under the Police Rules 1861 and similarly under other Police related laws,

iii. Non registration of the FIR may result in initiation of disciplinary proceeding, so complaint can be made to senior police officers.

iv. If the police does not register the FIR, then any aggrieved person can approach the Illaqa magistrate who can issue direction to the police for registration of FIR under section 156(3) of the Code of Criminal Procedure 1898.

v. If the police do not register the FIR, then any aggrieved person can approach a Sessions Judge who is ex-officio Justice of Peace for exercise of powers under section 22-A (6) Code of Criminal Procedure 1898 and he can order registration of an FIR. **(Annex E)**

vi. The High Court has powers under section 22 of the Code of Criminal Procedure 1898 and article 199 of the Constitution to direct the police to register the FIR.

i). What can be done if a false FIR is registered?

i. If a false FIR has been registered, then the police has an obligation to register a case under section 182 of the Pakistan Penal Code 1860 against the complainant who registered the FIR.

ii. A High Court has powers to quash the FIR if it considers that it may lead to the abuse of the process of law.

iii. A High Court can quash an FIR and investigation if it is mala fide and without jurisdiction and can pass necessary orders to ensure justice and fair play.

iv. A Sessions Judge does not have a jurisdiction to entertain the application of cancellation of the FIR.

2). Direct Complaint before a Magistrate

(i) A magistrate of the first class can directly take cognizance of an offence upon receiving the complaint of the facts, which constitute such offence.

(ii) The direct private complaint can be filed before a magistrate having territorial jurisdiction in the matter.

(iii) A complaint can be lodged directly to the magistrate if a party does not want to register the case with the police.

(iv) A complaint can be lodged directly to the magistrate if the police lodges its own FIR without consulting the complainant

(v) A complaint can be lodged directly to the magistrate if the police refuse to register the FIR.

(vi) A complaint can also be filed when the FIR is cancelled or quashed.

(vii) The magistrate can also take cognizance upon a report in writing of such facts made by any police officer, upon

information from any other person or upon his own knowledge or suspicion.

(viii) When a direct complaint is lodged before a magistrate, the magistrate is empowered to direct the police to investigate the case and the police have all the powers to investigate the case.

(ix) If the complaint is filed in a case where an FIR is also registered and challan is submitted in the court, the complaint case should be taken first. **(Annex F)**

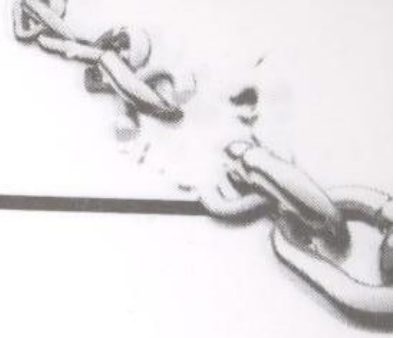
C. Search Warrants by the Magistrate

1. A bonded labour or his family member who thinks that some bonded labour or any member of his family is illegally confined by someone, can apply to a Magistrate of First class to issue a search warrant.

2. The Magistrate if has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, may issue a search warrant.

3. The search warrant can be directed any person, may be a police office or a private person and the person to whom search warrant is directed may search for the person so confined, and the person, if found, shall be immediately taken before a magistrate , who shall make such order as in the circumstances of the case seems proper.

4. A member of an association, society, NGO, CSO etc,



who thinks that any of the bonded labour or any of his family members is confined, may apply for the search warrant. **(Annex G)**

3). Habeas Corpus Petition in Sessions Court

(i) Habeas corpus is a legal action, or writ, through which a person can seek relief from their unlawful detention by another person.

(ii) A writ of habeas corpus ad subjiciendum is also known as "The Great Writ.

(iii) It protects individuals from being harmed by the employers or police or any person or agency.

(iv) The writ of habeas corpus has historically been an important instrument for the safeguarding of individual freedom against arbitrary state action.

(v) If a bonded labour or any other labour or his/her family member is detained, he or she can file a writ of habeas corpus in the local Sessions court.

(vi) If a bonded laborer thinks that some members of his family have been illegally detained by some offenders or the members of his family or any other person thinks that a laborer has been illegally detained, he can directly file an application for the direction of the nature of Habeas corpus in the court of Sessions Judge under Section 491 of the Cr.P.C.

(vii) It means that a person within the limits of its criminal

appellate jurisdiction be brought up before the court to be dealt with according to the law and that a person illegally or improperly detained in public or private custody within such limits be set at liberty.

(viii) The Session Court can direct the police to produce the detained persons before the court.

(ix) The Sessions Court can direct the police to register a case against offenders.

(x) The police has to comply with the directions, when and if, passed by the Sessions Judge.

4). Habeas corpus Petition in High Court

a. Habeas corpus is a legal action, or writ, through which a person can seek relief from their unlawful detention or that of another person.

b. It protects individuals from being harmed by the employers or police or any person or agency.

c. If a bonded laborer thinks that some members of his family have been illegally detained by some offenders or the members of his family or any other person thinks that a laborer has been illegally detained, he can directly file a petition for direction of the nature of Habeas corpus in the High court under Section 491 of the Cr.P.C. **(Annex H)**

d. It means that a person within the limits of the jurisdiction of the court be brought up before the court

to be dealt with according to law and that a person illegally or improperly detained in public or private custody within such limits be set at liberty.

(ii) In addition to this, the High Court being the constitutional court in the country, can also issue the writ of habeas corpus under Article 199 of the Constitution of Pakistan.

(iii) The writ of habeas corpus has historically been an important instrument for the safeguarding of individual freedom against arbitrary state action and even now it the most effective tool to protect fundamental rights and to be protected from illegal actions.

(iv) If a bonded labourer or any other labourer or its family member is detained, he or she can file a writ of habeas corpus in a High Court.

(v) Every other person related to the bonded labourer who feels aggrieved can also file this habeas corpus writ petition in a High Court.

(vi) The High Court can direct the police to produce the detained persons before the court.

(vii) The High Court can direct the police to register a case against offenders.

(viii) The police has to comply with the directions, when and if, passed by the High Court. **(Annex I)**

5) Original Jurisdiction of the Supreme Court

(i) The Supreme Court of Pakistan is the highest court of the land and the Constitution makes it the final authority for the enforcement of the fundamental rights.

(ii) As the liberty of the individual is to the treated in accordance with law as a fundamental right guaranteed by the Constitution of Pakistan, the Supreme Court can take action for the protection of these fundamental rights.

(iii) The Supreme court under article 184 (3) of the Constitution can take cognizance of the matter when the enforcement of fundamental rights and matters of public importance are involved.

(iv) Normally the Supreme Court does not take up individual matters but if it thinks that the matter concerns the enforcement of fundamental rights and of public importance, then it can take up the matter.

(v) The Supreme Court can take suo motto action or may act on the application made by a bonded labourer or any other person in this regard.

(vi) The powers of the Supreme Court for the protection of fundamental rights are unlimited and it can take any action and pass any order for the attainment of justice.

(vii) In fact the modern movement for the abolition of the bonded labour started with a judicial action by the Supreme Court in the Darshan Masih case. The case is reported as PLD 1990 SC 513.

(viii) Any person can approach the apex court if the above-mentioned conditions are met.

(ix) In recent years, the apex court has become more active with regard to the protection of fundamental rights of vulnerable sections of society.

(x) The apex court can pass any direction to the police. **(Annex J)**

12. Annexures

A. Article 11

B. PPC section 374

C. Bonded Labour System (Abolition Act) Act1992

D. Section 154 of Code of Criminal Procedure 1898

E. Section 22-A of Code of Criminal Procedure 1898

F. Section 200 of Code of Criminal Procedure 1898

G. Section 100 of Code of Criminal Procedure 1898

H. Section 491 of Code of Criminal Procedure 1898

I. Article 199

J. Article 184

Annexure-A

Constitution of Pakistan

11. Slavery, forced labour, etc. prohibited.

(1) Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form.

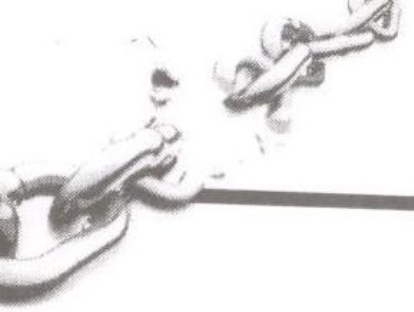
(2) All forms of forced labour and traffic in human beings are prohibited.

(3) No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.

(4) Nothing in this Article shall be deemed to affect compulsory service:-

(a) by any person undergoing punishment for an offence against any law; or

(b) required by any law for public purpose provided that no compulsory service shall be of a cruel nature or incompatible with human dignity.



Annexure-B

Pakistan Penal Code 1860

374. Unlawful compulsory labour:

(1) Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to [five years] or with fine, or with both.

Annexure-C

Bonded Labour System (Abolition) Act, 1992

An Act to provide for abolition of bonded labour system

Whereas clause (2) of Article 11 of the Constitution of the Islamic Republic of Pakistan prohibits all forms of forced labour.

And whereas it is necessary to provide for abolition of bonded labour system with a view to preventing the economic and physical exploitation of the labour class in the country and for matters connected therewith or incidental thereto;

It is hereby enacted as follows: -

1. Short title, extent and commencement:

(1) This Act may be called the Bonded Labour System (Abolition) Act, 1992.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definitions:

In this Act, unless there is anything repugnant in the subject or context:

(a) "advance (peshgi)" means an advance (peshgi) whether in cash or in kind, or partly in cash or partly in kind, made by one person (hereinafter referred to as the creditor) to another person (hereinafter referred to

as the debtor);

(b) "bonded debt" means an advance (peshgi) obtained, or presumed to have been obtained, by a bonded labourer under, or in pursuance of, the bonded labour system;

(c) "bonded labour" means any labour or service rendered under the bonded labour system;

(d) "bonded labourer means a labour who incurs, or has, or is presumed to have, incurred, a bonded debt;

(e) "bonded labour system" means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered into an agreement with the creditor to the effect that

(i) in consideration of an advance (peshgi) obtained by him or by any of the members of his family [whether or not such advance (peshgi) is evidenced by any document) and in consideration of the interest, if any, due on such advance (peshgi), or

(ii) in pursuance of any customary or social obligation, or

(iii) for any economic consideration received by him or by any of the members of his family; he would:

(1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor or for the benefit of the

creditor, for a specified period or for an unspecified period either without wages or for nominal wages or

(2) forfeit the freedom of employment or adopting other means of livelihood for a specified period or for an unspecified period, or

(3) forfeit the right to move freely from place to place, or

(4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him; and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has or is presumed to have, entered, into an agreement with the creditor to the effect that, in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor.

(f) "family" means:

(i) in the case of a male bonded labourer, the wife or wives, and in the case of a female bonded labourer, the husband of the bonded labourer, and;

(ii) the parents, children, minor brother, and unmarried, divorced or widowed sisters of the bonded labourer wholly dependent on him;

4. Abolition of bonded labour system:

(1) On the commencement of this Act, the bonded labour system shall stand abolished and every bonded labourer shall stand freed and discharged from any obligation to render any bonded labour.

(2) No person shall make any advance under, or in pursuance of, the bonded labour system or compel any person to render any bonded labour or other form of forced, labour.

8. Creditor not to accept payment against extinguished debt:

(1) No creditor shall accept any payment against any bonded debt which has been extinguished or deemed to have been extinguished or fully satisfied by virtue of the provisions of this Act.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term, which may extend to three years, or with fine, which shall not be less than fifteen thousand rupees, or with both.

11. Punishment for enforcement of bonded labour:

Whoever, after the commencement of this Act compels any person to render any bonded labour shall be punishable with imprisonment for a term which shall not be less than two years nor more than five years, or with fine which shall not be less than fifty thousand rupees, or with both.

11. Punishment for extracting bonded labour under the bonded labour system:

Whoever enforces, after the commencement of this Act any custom, tradition, practice, contract, agreement or other instrument, by virtue of which any person or any member of his family is required to render any service under the bonded labour system, shall be punishable with imprisonment for a term which shall not be less than two years nor more than five years or with fine which shall not be less than fifty thousands rupees, or with both; and out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of not less than fifty rupees for each day for which bonded labour was extracted from him.

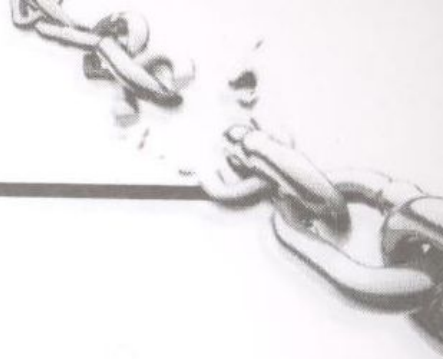
13. Punishment for omission or failure to restore possession of property to bonded labourer:

Whoever, being required by this Act to restore any property to the possession of any bonded labourer, omits or fails to do so, within a period of ninety days from the commencement of this Act shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both; and out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of ten rupees for each day during which possession of the property was not restored to him.

Annexure-D

154. Information in cognizable cases:

Information relating to the, commission of a cognizable offence if given orally to an officer incharge of a police station, shall reduced to writing by him or under his direction and then read over to the informant and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf.



Annexure-E

The Code of Criminal Procedure 1898

22-A. Powers of Justices of the Peace:

A Justice on the Peace for any local area shall, for the purpose of making an arrest have within such area all the powers of a police officer referred to in section 54 and an officer-in-charge of a police station referred to in section 55.

(2) A Justice of the Peace making an arrest in exercise of any powers under subsection

(1) shall, forthwith, take or cause to be taken the person arrested before the officer incharge of the nearest police station and furnish such officer with a report as to the circumstances of the arrest and such officer shall thereupon re-arrest the person.

(3) A Justice of the Peace for any local area shall have powers, within such area, to call upon any member of the police force on duty to aid him.

a) in taking or preventing the escape of any person who has participated in the commission of any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having so participated; and

b) in the prevention of crime in general and, in particular, in the prevention of a breach of the peace

or a disturbance of the public tranquillity.

(4) Where a member of the police force on duty has been called upon to render and aid under sub-section (3), such call shall be deemed to have been made by a competent authority.

(5) A Justice of the Peace for any local area may, in accordance with such rules as may be made by the Provincial Government:

a) issue a certificate as to the identity of any person residing within such area, or

b) verify any document brought before him by any such person, or

c) attest any such document required by or under any law for the time being in force to be attested by a Magistrate, and until the contrary is proved, any certificate so issued shall be presumed to be correct and any document so verified shall be deemed to be duly verified, and any document so attested shall be deemed to have been as fully attested as if he had been a Magistrate.

Annexure-F

The Code of Criminal Procedure 1898

200. Examination of complainant:

A Magistrate taking, cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate

Provided as follows:

(a) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under Section 192 [or sending it to the Court of Session];

(aa) when the complaint Is made in writing nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a Court or by a public servant acting or -purporting to act in the discharge of his official duties;

(b) [Omitted A.O., 1949,Sch.];

(c) when the case has been transferred under Section 192-and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

Annexure-G

The Code of Criminal Procedure 1898

100. Search for persons wrongfully confined:

If any Magistrate of the First Class has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

Annexure-H

The Code of Criminal Procedure 1898

491. Power to issue directions of the nature of a habeas corpus :

(1) Any High Court may, whenever it thinks fit, direct:

(a) that a person within the limits of its appellate criminal jurisdiction be brought up before the Court to be dealt with according to law;

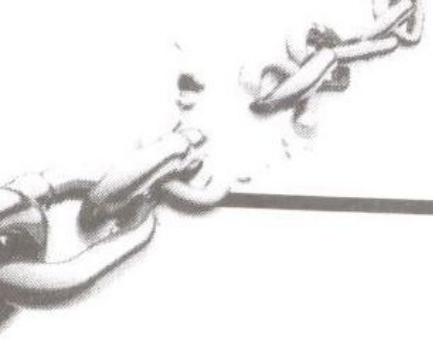
(b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty ;

(c) that a prisoner detained in any Jail situated within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners for trial or to be examined touching any matter pending before such Court martial or Commissioners respectively ;

(e) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and

(f) that the body of a defendant within such limits be brought in on the Sheriff's return of Cepi Corpus to a



writ of attachment.

(2) The High Court may, from time to time, frame rules to regulate the procedure in cases under this section.

(3) Nothing in this section applies to persons detained under any law providing for preventive detention.

Annexure-I

Constitution of Pakistan

199. Jurisdiction of High Court.

(1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law:

(a) on the application of any aggrieved party, make an order:

(i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or

(ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or

(b) on the application of any person, make an order:

(i) directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful

authority or in an unlawful manner; or

(ii) requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or

(c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part 11.

Annexure-J

Constitution of Pakistan

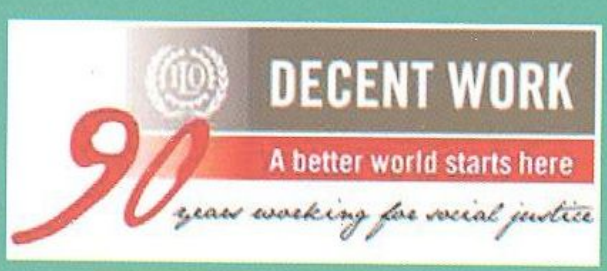
184. Original Jurisdiction of Supreme Court.

(1) The Supreme Court shall, to the exclusion of every other court, have original jurisdiction in any dispute between any two or more Governments.

Explanation:

In this clause, "Governments" means the Federal Government and the Provincial Governments.

(2) In the exercise of the jurisdiction conferred on it by clause (1), the Supreme Court shall pronounce declaratory judgments only.

(3) Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II is involved have the power to make an order of the nature mentioned in the said Article.

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